

## Message Text

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PAGE 01 COLOMB 03444 140431Z

12

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C O N F I D E N T I A L COLOMBO 3444

E.O. 11652: GDS

TAGS: PINT,CE

SUBJECT: HIGH COURT ISSUES JUDGEMENT ON EMERGENCY

REF (A) COLOMBO 2693, (B) COLOMBO 1976, (C) COLOMBO 1841

1. SUMMARY: A HIGH COURT-AT-BAR TRYING TAMIL SEPARATISTS ISSUED A JUDGMENT SEPTEMBER 10 UPHOLDING ONE OF THE PRELIMINARY PROCEDURAL OBJECTIONS OF THE DEFENSE, DISMISSING THE CASE, AND IN THE PROCESS THROWING INTO DOUBT THE VALIDITY OF THE EMERGENCY DECLARED IN 1971 AND THE REGULATIONS SUBSEQUENTLY PROMULGATED UNDER IT. IT WAS AN UNEXPECTED VICTORY AND MORALE-BOOSTER FOR THE TAMIL UNITED LIBERATION FRONT (TULF), THREE OF WHOSE M.P.'S WERE TO BE TRIED IN THE CASE. THE FURTHER RAMIFICATIONS OF THE COURT'S ACTION ARE UNCLEAR, PARTICULARLY IN LIGHT OF THE GOVERNMENT'S DECLARED INTENTION TO APPEAL AND THE WIDESPREAD OPINION THAT THIS COURT'S DECISIONS ARE NOT APPEALABLE. END SUMMARY.

2. IN A STARTLING JUDGMENT SEPTEMBER 10, THE HIGH COURT-AT-BAR SET UP TO TRY FOUR TAMIL DISSIDENTS, INCLUDING THREE TULF M.P.'S, FOR DISTRIBUTION OF  
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PAGE 02 COLOMB 03444 140431Z

SECESSIONIST LITERATURE (REF A), UPHELD THE DEFENSE

OBJECTION THAT THE EMERGENCY REGULATION OF MAY 1976 UNDER WHICH THE COURT WAS SET UP WERE INVALID. THE IMMEDIATE CONSEQUENCES HAVE BEEN THE DISMISSAL OF THE CHARGES AND THE GOVERNMENT'S ANNOUNCEMENT THAT IT WILL SOMEHOW ATTEMPT TO QUASH THE COURT'S ORDER, ALTHOUGH SUCH A DECISION IS GENERALLY BELIEVED TO BE UNAPPEALABLE.

3. THE HIGH COURT-AT-BAR, A PANEL OF THREE JUDGES, MADE THE STATEMENT IN ITS DECISION THAT UNDER THE PROVISIONS OF THE 1972 CONSTITUTION "THERE HAS BEEN NO VALID DECLARATION OF A STATE OF EMERGENCY BY THE PRESIDENT." APPLYING THIS PRINCIPLE TO THE CASE AT HAND, THE COURT RULED THAT THEREFORE EMERGENCY REGULATION, NUMBER 59, OF MAY 1976, UNDER WHICH THE HIGH COURT-AT-BAR WAS SET UP WAS ALSO INVALID AND THAT THEREFORE IT COULD NOT CONTINUE TO TRY THE CASE.

4. THE DEFENSE HAD MADE TWO PRELIMINARY OBJECTIONS IN THE TRIAL. THE OTHER CONTENTION, THAT THE CONSTITUTION ITSELF WAS NOT VALID BECAUSE IT NEVER RECEIVED THE APPROVAL OF THE TAMIL COMMUNITY, WAS HELD NOT JUSTICIABLE BY A COURT SET UP UNDER THE CONSTITUTION.

5. COMMENTJ

THE STATE OF EMERGENCY, DECLARED IN 1971 AT THE TIME OF THE RADICAL YOUTH INSURGENCY, HAS BEEN USED FOR A VARIETY OF PURPOSES OVER THE PAST FIVE YEARS, FROM PRICE CONTROL TO PROSECUTION OF INSURGENTS AND VIOLATORS OF FOREIGN EXCHANGE REGULATIONS. ALTHOUGH THE HIGH COURT HAS NOT COMMENTED ON THE OTHER EMERGENCY REGULATIONS, BOTH THOSE PROMULGATED BEFORE AND AFTER THE 1972 CONSTITUTION THEIR VALIDITY IS PRESUMABLY THROWN INTO QUESTION BY THIS DECISION.

6. THE GOVERNMENT, HOWEVER, IS NOT WITHOUT RECOURSE IN THIS MATTER. ALTHOUGH MANY SHARE THE VIEW OF OPPOSITION M.P. COLVIN DE SILVA, WHO PLAYED A KEY ROLE IN DRAFTING THE PRESENT CONSTITUTION, THAT "YOU CONFIDENTIAL

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PAGE 03      COLOMB 03444 140431Z

CANNOT APPEAL AGAINST THE JUDGMENT OF A TRIAL-AT-BAR UNLESS YOU INTEND TO REVIVIE THE (BRITISH) PRIVY COUNCIL." THE GOVERNMENT WILL ASK THE SUPREME COURT TO ISSUE A WRIT OF CERTIORARI TO QUASH THE DISMISSAL ORDER AND OF MANDAMUS TO DIRECT THE HIGH COURT-AT-BAR TO PROCEED WITH THE TRIAL. AS A LAST RESORT THE GOVERNMENT MIGHT TURN TO THE NATIONAL STATE ASSEMBLY, MADE "THE SUPREME INSTRUMENT OF

STATE POWER" BY THE 1972 CONSTITUTION, AND SEEK  
PASSAGE OF A LAW NULLIFYING THE EFFECT OF THE COURT'S  
DECISION. THE EXTENT TO WHICH SUCH A LAW MIGHT  
BE MADE RETROACTIVE IS ANOTHER QUESTION.

7. WHATEVER THE CONSEQUENCES FOR THE NATIONAL STATE OF  
EMERGENCY, THE DECISION HAS BECOME MORALE-BOOSTER TO THE  
TULF, WHICH HAD NOT ANTICIPATED A FAVORABLE DECISION.  
ANOTHER PROTEST CAMPAIGN FOR OCTOBER 1 AND 2-HAD BEEN  
ANNOUNCED BEFORE THE COURT'S PRONOUNCEMENT; THE  
DECISION MAY FURTHER EMBOLDEN THEM. ANOTHER  
TRIAL-AT-BAR, THIS ONE TO TRY TAMILS ACCOUSED OF  
ASSASSINATING THE PRO-GOVERNMENT MAYOR OF JAFFNA LAST  
YEAR, IS SCHEDULED TO BEGIN SOON (REF A) BUT  
COULD NOW BE POSTPONED.  
REED

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## Message Attributes

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